

C.R.S. 38-33-101

COLORADO REVISED STATUTES

\*\*\* This document reflects changes passed at the Second Regular Session and First Extraordinary Session of the Sixty-Eighth General Assembly of the State of Colorado (2012) \*\*\*

TITLE 38. PROPERTY - REAL AND PERSONAL  
REAL PROPERTY  
ARTICLE 33. **CONDOMINIUM OWNERSHIP ACT**

**C.R.S. 38-33-101 to 38-33-113 (2012)**

**38-33-101. Short title.**

This article shall be known and may be cited as the "**Condominium Ownership Act**".

**38-33-102. Condominium ownership recognized.**

Condominium ownership of real property is recognized in this state. Whether created before or after April 30, 1963, such ownership shall be deemed to consist of a separate estate in an individual air space unit of a multi-unit property together with an undivided interest in common elements. The separate estate of any condominium owner of an individual air space unit and his common ownership of such common elements as are appurtenant to his individual air space unit by the terms of the recorded declaration are inseparable for any period of condominium ownership that is prescribed by the recorded declaration. Condominium ownership may exist on land owned in fee simple or held under an estate for years.

**38-33-103. Definitions.**

As used in this article, unless the context otherwise requires:

- (1) "Condominium unit" means an individual air space unit together with the interest in the common elements appurtenant to such unit.
- (2) "Declaration" is an instrument recorded pursuant to [section 38-33-105](#) and which defines the character, duration, rights, obligations, and limitations of condominium ownership.
- (3) Unless otherwise provided in the declaration or by written consent of all the condominium owners, "general common elements" means: The land or the interest therein on which a building

or buildings are located; the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of such building or buildings; the basements, yards, gardens, parking areas, and storage spaces; the premises for the lodging of custodians or persons in charge of the property; installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, central air conditioning, and incinerating; the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; such community and commercial facilities as may be provided for in the declaration; and all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

(4) "Individual air space unit" consists of any enclosed room or rooms occupying all or part of a floor or floors in a building of one or more floors to be used for residential, professional, commercial, or industrial purposes which has access to a public street.

(5) "Limited common elements" means those common elements designated in the declaration as reserved for use by fewer than all the owners of the individual air space units.

#### **38-33-104. Assessment of condominium ownership.**

Whenever condominium ownership of real property is created or separate assessment of condominium units is desired, a written notice thereof shall be delivered to the assessor of the county in which said real property is situated, which notice shall set forth descriptions of the condominium units. Thereafter all taxes, assessments, and other charges of this state or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each condominium unit, each of which shall be carried on the tax books as a separate and distinct parcel for that purpose and not on the building or property as a whole. The valuation of the general and limited common elements shall be assessed proportionately upon the individual air space unit in the manner provided in the declaration. The lien for taxes assessed to any individual condominium owner shall be confined to his condominium unit and to his undivided interest in the general and limited common elements. No forfeiture or sale of any condominium unit for delinquent taxes, assessments, or charges shall divest or in any way affect the title of other condominium units.

#### **38-33-105. Recording of declaration - certain rules and laws to apply.**

(1) The declaration shall be recorded in the county where the condominium property is located. Such declaration shall provide for the filing for record of a map properly locating condominium units. Any instrument affecting the condominium unit may legally describe it by the identifying condominium unit number or symbol as shown on such map. If such declaration provides for the disposition of condominium units in the event of the destruction or obsolescence of buildings in

which such units are situate and restricts partition of the common elements, the rules or laws known as the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall not be applied to defeat or limit any such provisions.

(2) To the extent that any such declaration contains a mandatory requirement that all condominium unit owners be members of an association or corporation or provides for the payment of charges assessed by the association upon condominium units or the appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence, any rule of law to the contrary notwithstanding, the same shall be considered as covenants running with the land binding upon all condominium owners and their successors in interest. Any common law rule terminating agency upon death or disability of a principal shall not be applied to defeat or limit any such provisions.

### **38-33-105.5. Contents of declaration.**

(1) The declaration shall contain:

(a) The name of the condominium property, which shall include the word "condominium" or be followed by the words "a condominium";

(b) The name of every county in which any part of the condominium property is situated;

(c) A legally sufficient description of the real estate included in the condominium property;

(d) A description or delineation of the boundaries of each condominium unit, including its identifying number;

(e) A statement of the maximum number of condominium units that may be created by the subdivision or conversion of units in a multiple-unit dwelling owned by the declarant;

(f) A description of any limited common elements;

(g) A description of all general common elements;

(h) A description of all general common elements which may be conveyed to any person or entity other than the condominium unit owners;

(i) A description of all general common elements which may be allocated subsequently as limited common elements, together with a statement that they may be so allocated, and a description of the method by which the allocations are to be made;

(j) An allocation to each condominium unit of an undivided interest in the general common elements, a portion of the votes in the association, and a percentage or fraction of the common expenses of the association;

- (k) Any restrictions on the use, occupancy, or alienation of the condominium units;
  - (l) The recording data for recorded easements and licenses appurtenant to, or included in, the condominium property or to which any portion of the condominium property is or may become subject;
  - (m) Reasonable provisions concerning the manner in which notice of matters affecting the condominium property may be given to condominium unit owners by the association or other condominium unit owners; and
  - (n) Any other matters the declarant deems appropriate.
- (2) This section shall apply to any condominium ownership of property created on or after July 1, 1983.

**38-33-106. Condominium bylaws - contents – exemptions.**

- (1) Unless exempted, the administration and operation of multi-unit condominiums shall be governed by the declaration.
- (2) At or before the execution of a contract for sale and, if none, before closing, every initial bona fide condominium unit buyer shall be provided by the seller with a copy of the bylaws, with amendments, if any, of the unit owners' association or corporation, and such bylaws and amendments shall be of a size print or type to be clearly legible.
- (3) The bylaws shall contain or provide for at least the following:
  - (a) The election from among the unit owners of a board of managers, the number of persons constituting such board, and that the terms of at least one-third of the members of the board shall expire annually; the powers and duties of the board; the compensation, if any, of the members of the board; the method of removal from office of members of the board; and whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board may be delegated by the board to either or both of them; however, the board when so delegating shall not be relieved of its responsibility under the declaration;
  - (b) The method of calling meetings of the unit owners; the method of allocating votes to unit owners; what percentage of the unit owners, if other than a majority, constitutes a quorum; and what percentage is necessary to adopt decisions binding on all unit owners;
  - (c) The election of a president from among the board of managers, who shall preside over the meetings of the board of managers and of the unit owners;

(d) The election of a secretary, who shall keep the minutes of all meetings of the board of managers and of the unit owners and who, in general, shall perform all the duties incident to the office of secretary;

(e) The election of a treasurer, who shall keep the financial records and books of account. The treasurer may also serve as the secretary.

(f) The authorization to the board of managers to designate and remove personnel necessary for the operation, maintenance, repair, and replacement of the common elements;

(g) A statement that the unit owners and their mortgagees, if applicable, may inspect the records of receipts and expenditures of the board of managers pursuant to [section 38-33-107](#) at convenient weekday business hours, and that, upon ten days' notice to the manager or board of managers and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner;

(h) A statement as to whether or not the condominium association is a not for profit corporation, an unincorporated association, or a corporation;

(i) The method of adopting and of amending administrative rules and regulations governing the operation and use of the common elements;

(j) The percentage of votes required to modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws;

(k) The maintenance, repair, replacement, and improvement of the general and limited common elements and payments therefor, including a statement of whether or not such work requires prior approval of the unit owners' association or corporation when it would involve a large expense or exceed a certain amount;

(l) The method of estimating the amount of the budget; the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses and of any other expenses lawfully agreed upon; and a statement concerning the division, if any, of the assessment charge between general and limited common elements and the amount or percent of such division;

(m) A list of the services provided by the unit owners' association or corporation which are paid for out of the regular assessment;

(n) A statement clearly and separately indicating what assessments, debts, or other obligations are assumed by the unit owner on his condominium unit;

(o) A statement as to whether or not additional liens, other than mechanics' liens, assessment liens, or tax liens, may be obtained against the general or limited common elements then existing in which the unit owner has a percentage ownership;

(p) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the general and limited common elements as are designed to prevent unreasonable interference with the use of their respective units and said common elements by the several unit owners;

(q) Such restrictions on and requirements concerning the sale or lease of a unit including rights of first refusal on sale and any other restraints on the free alienability of the unit;

(r) A statement listing all major recreational facilities and to whom they are available and clearly indicating whether or not fees or charges, if any, in conjunction therewith, are in addition to the regular assessment;

(s) A statement relating to new additions of general and limited common elements to be constructed, including but not limited to:

(I) The effect on a unit owner in reference to his obligation for payment of the common expenses, including new recreational facilities, costs, and fees, if any;

(II) The effect on a unit owner in reference to his ownership interest in the existing general and limited common elements and new general and limited common elements;

(III) The effect on a unit owner in reference to his voting power in the association.

(4) Any declaration recorded on or after January 1, 1976, shall not conflict with the provisions of this section or bylaws made in accordance with this section. The requirements contained in paragraphs (k) to (s) of subsection (3) of this section need not be included in the bylaws if they are set forth in the declaration.

(5) This section shall not apply to:

(a) Commercial or industrial condominiums or any other condominiums not used for residential use;

(b) Condominiums of ten units or less;

(c) Condominiums established by a declaration recorded prior to January 1, 1976.

**38-33-107. Records of receipts and expenditures - availability for examination.**

The manager or board of managers, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the general and limited common elements. Such records authorizing the payments shall be available for examination by the unit owners at convenient weekday business hours.

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**38-33-108. Violations – penalty.**

Any person who knowingly and willfully violates the provisions of [section 38-33-106](#) or [38-33-107](#) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

**38-33-109. Unit owners' liability.**

In any suit or arbitration against a condominium unit owners' association wherein damages are awarded or settlement is made, the individual unit owner's liability in his capacity as a percentage owner of the general or limited common elements or as a member of the condominium association shall not exceed the amount of damages or settlement multiplied by his percentage ownership in the general or limited common elements, as the case may be. In the case of incorporation by unit owners, their liability as stockholders shall be determined as any other corporate stockholder.

**38-33-110. Time-sharing – definitions.**

As used in this section and [section 38-33-111](#), unless the context otherwise requires:

(1) (a) "Interval estate" means a combination of:

(I) An estate for years terminating on a date certain, during which years title to a time share unit circulates among the interval owners in accordance with a fixed schedule, vesting in each such interval owner in turn for a period of time established by the said schedule, with the series thus established recurring annually until the arrival of the date certain; and

(II) A vested future interest in the same unit, consisting of an undivided interest in the remainder in fee simple, the magnitude of the future interest having been established by the time of the creation of the interval estate either by the project instruments or by the deed conveying the interval estate. The estate for years shall not be deemed to merge with the future interest, but neither the estate for years nor the future interest shall be conveyed or encumbered separately from the other.

(b) "Interval estate" also means an estate for years as described in subparagraph (I) of paragraph (a) of this subsection (1) where the remainder estate, as defined either by the project instruments or by the deed conveying the interval estate, is retained by the developer or his successors in interest.

(2) "Interval owner" means a person vested with legal title to an interval estate.

(3) "Interval unit" means a unit the title to which is or is to be divided into interval estates.

(4) "Project instruments" means the declaration, the bylaws, and any other set of restrictions or

restrictive covenants, by whatever name denominated, which limit or restrict the use or occupancy of condominium units. "Project instruments" includes any lawful amendments to such instruments. "Project instruments" does not include any ordinance or other public regulation governing subdivisions, zoning, or other land use matters.

(5) "Time share estate" means either an interval estate or a time-span estate.

(6) "Time share owner" means a person vested with legal title to a time share estate.

(7) "Time share unit" means a unit the title to which is or is to be divided either into interval estates or time-span estates.

(8) "Time-span estate" means a combination of:

(a) An undivided interest in a present estate in fee simple in a unit, the magnitude of the interest having been established by the time of the creation of the time-span estate either by the project instruments or by the deed conveying the time-span estate; and

(b) An exclusive right to possession and occupancy of the unit during an annually recurring period of time defined and established by a recorded schedule set forth or referred to in the deed conveying the time-span estate.

(9) "Time-span owner" means a person vested with legal title to a time-span estate.

(10) "Time-span unit" means a unit the title to which is or is to be divided into time-span estates.

(11) "Unit owner" means a person vested with legal title to a unit, and, in the case of a time share unit, "unit owner" means all of the time share owners of that unit. When an estate is subject to a deed of trust or a trust deed, "unit owner" means the person entitled to beneficial enjoyment of the estate and not to any trustee or trustees holding title merely as security for an obligation.

### **38-33-111. Special provisions applicable to time share ownership.**

(1) No time share estates shall be created with respect to any condominium unit except pursuant to provisions in the project instruments expressly permitting the creation of such estates. Each time share estate shall constitute for all purposes an estate or interest in real property, separate and distinct from all other time share estates in the same unit or any other unit, and such estates may be separately conveyed and encumbered.

(2) Repealed.

(3) With respect to each time share unit, each owner of a time share estate therein shall be individually liable to the unit owners' association or corporation for all assessments, property taxes both real and personal, and charges levied pursuant to the project instruments against or with respect to that unit, and such association or corporation shall be liable for the payment



thereof, except to the extent that such instruments provide to the contrary. However, with respect to each other, each time share owner shall be responsible only for a fraction of such assessments, property taxes both real and personal, and charges proportionate to the magnitude of his undivided interest in the fee to the unit.

(4) No person shall have standing to bring suit for partition of any time share unit except in accordance with such procedures, conditions, restrictions, and limitations as the project instruments and the deeds to the time share estates may specify. Upon the entry of a final order in such a suit, it shall be conclusively presumed that all such procedures, conditions, restrictions, and limitations were adhered to.

(5) In the event that any condemnation award, any insurance proceeds, the proceeds of any sale, or any other sums shall become payable to all of the time share owners of a unit, the portion payable to each time share owner shall be proportionate to the magnitude of his undivided interest in the fee to the unit.

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**38-33-112. Notification to residential tenants.**

(1) A developer who converts an existing multiple-unit dwelling into condominium units, upon recording of the declaration as required by [section 38-33-105](#), shall notify each residential tenant of the dwelling of such conversion.

(2) Such notice shall be in writing and shall be sent by certified or registered mail, postage prepaid, and return receipt provided. Notice is complete upon mailing to the tenant at the tenant's last known address. Notice may also be made by delivery in person to the tenant of a copy of such written notice, in which event notice is complete upon such delivery.

(3) Said notice constitutes the notice to terminate the tenancy as provided by [section 13-40-107](#), C.R.S.; except that no residential tenancy shall be terminated prior to the expiration date of the existing lease agreement, if any, unless consented to by both the tenant and the developer. If the term of the lease has less than ninety days remaining when notification is mailed or delivered, as the case may be, or if there is no written lease agreement, residential tenancy may not be terminated by the developer less than ninety days after the date the notice is mailed or delivered, as the case may be, to the tenant, unless consented to by both the tenant and the developer. The return receipt shall be prima facie evidence of receipt of notice. If the term of the lease has less than ninety days remaining when notification is mailed or delivered, as the case may be, the tenant may hold over for the remainder of said ninety-day period under the same terms and conditions of the lease agreement if the tenant makes timely rental payments and performs other conditions of the lease agreement.

(4) The tenancy may be terminated within the ninety days prescribed in subsection (3) of this section upon agreement by the tenant in consideration of the payment of all moving expenses by

the developer or for such other consideration as mutually agreed upon. Such tenancy may also be terminated within the ninety days prescribed in subsection (3) of this section upon failure by the tenant to make timely rental or lease payments.

(5) Any person who applies for a residential tenancy after the recording of the declaration shall be informed of this recording at the time of application, and any leases executed after such recording may provide for termination within less than ninety days provided that the terms of the lease conspicuously disclose the intention to convert the property containing the leased premises to condominium ownership.

(6) The general assembly hereby finds and declares that the notification procedure set forth in this section is a matter of statewide concern. No county, municipality, or other political subdivision whether or not vested with home rule powers under article XX of the Colorado constitution, shall adopt or enforce any ordinance, rule, regulation, or policy which conflicts with the provisions of this section.

**38-33-113. License to sell condominiums and time shares.**

The general assembly hereby finds and declares that the licensing of persons to sell condominiums and time shares is a matter of statewide concern.